



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 8, 2006

Ms. Lydia L. Perry
Law Offices of Robert E. Luna, P.C.
4411 North Central Expressway
Dallas, Texas 75205

OR2006-06020

Dear Ms. Perry:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 251216.

The Carrollton-Farmers Branch Independent School District (the "district"), which you represent, received a request from a staff investigator with the Texas Education Agency (the "TEA"), which has assumed the duties of the State Board for Educator Certification ("SBEC"), for records pertaining to a former district employee.¹ You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.102, 552.114, 552.117, 552.130, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes, such as the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g(b)(1). FERPA provides that no federal funds will be made available under any applicable program to an

¹The 79th Texas legislature passed House Bill 1116, which required the transfer of SBEC's administrative functions and services to the TEA, effective September 1, 2005.

educational agency or institution that releases personally identifiable information, other than directory information, contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). This office generally applies the same analysis under section 552.114 and FERPA. Open Records Decision No. 539 (1990).

Section 552.114 of the Government Code exempts from disclosure student records at an educational institution funded completely or in part by state revenue. Section 552.026 of the Government Code provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

Gov't Code § 552.026. In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 of the Government Code without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 of the Government Code as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception. In this instance, you ask this office to determine if FERPA applies to certain information that you have marked. Therefore, we will consider whether any information in the submitted documents is protected by FERPA.

Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." *See* Open Records Decision Nos. 332 (1982), 206 (1978). This includes information that directly identifies a student or parent, as well as information that, if released, would allow the student's identity to be easily traced. *See* Open Records Decision No. 224 (1979) (finding student's handwritten comments protected under FERPA because they make identity of student easily traceable through handwriting, style of expression, or particular incidents related). Upon review, we conclude that the district must withhold the information you have marked, as well as the additional information we have marked, under section 552.114 and FERPA.

You next contend that some of the requested information is confidential under section 21.355 of the Education Code. Section 21.355 of the Education Code provides, "A

document evaluating the performance of a teacher or administrator is confidential.” This office interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). In that opinion, this office also determined that a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of the evaluation. *Id.* Similarly, an administrator is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is serving as an administrator at the time of the evaluation. *Id.* You indicate, and the documents reflect, that the information you have marked consists of evaluations of a former district teacher. Thus, provided the employee was required to hold and did hold the appropriate certificate and was teaching at the time of the submitted teaching evaluations, we find the district must withhold the information you have marked under section 552.101 in conjunction with section 21.355 of the Education Code.

Next, you seek to withhold portions of the submitted transcripts pursuant to section 552.102 of the Government Code. Section 552.102(b) excepts from disclosure most information on a transcript from an institution of higher education maintained in the personnel files of professional public school employees. Gov’t Code §552.102(b). Section 552.102(b) excepts from disclosure all information from transcripts other than the employee’s name, the courses taken, and the degree obtained. Open Records Decision No. 526 (1989). Thus, with the exception of the employee’s name, the courses taken, and the degree obtained, the district must withhold the information in the submitted transcripts pursuant to section 552.102(b) of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely elect to keep this information confidential pursuant to section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the district may only withhold information under section 552.117 on behalf of current or former officials or employees who elected to keep information confidential pursuant to section 552.024 prior to the date on which the request for this information was made. You represent that the district employee at issue timely elected to keep this information confidential prior to the date the district received the present request. We therefore determine that the district must withhold the information you have marked, along with the information we have marked, pursuant to section 552.117(a)(1) of the Government Code.

The submitted documents also contain information that is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in pertinent part:

- (a) Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. The district must withhold the information you have marked pursuant to section 552.130 of the Government Code.

The remaining submitted information contains e-mail addresses of members of the public. Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is specifically excluded by section 552.137(c). *See* Gov't Code § 552.137(a)-(c). We note that section 552.137 does not apply to the work e-mail addresses of officers or employees of a governmental body, a website address, or the general e-mail address of a business. The e-mail addresses at issue are not specifically excluded by section 552.137(c). Unless the individuals whose email addresses are at issue have consented to its release, we determine that the district must withhold the e-mail addresses you have marked, along with the e-mail addresses we have marked, pursuant to section 552.137(a) of the Government Code.

You note that the remaining information includes a social security number. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147. Therefore, the district must withhold the submitted social security number under section 552.147.²

In summary, the district must withhold information you have marked, as well as the additional information we have marked, under section 552.114 and FERPA. Provided the district employee at issue held the required certificates and was teaching during the time periods at issue, the district must withhold the submitted evaluations under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. Except for the employee's name, courses taken, and degree obtained, the district must withhold the information in the submitted transcripts pursuant to section 552.102(b) of the Government Code. The district must withhold the information you have marked, along with the information we have marked, pursuant to section 552.117(a)(1) of the Government Code. The information you have marked must be withheld pursuant to section 552.130 of the Government Code. Unless the individuals whose email addresses are at issue have consented to release, the district must withhold the e-mail addresses you have marked, along

²We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

with the e-mail addresses we have marked, pursuant to section 552.137(a) of the Government Code. The district must withhold the submitted social security number under section 552.147. The remainder of the requested information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Cindy Nettles". The signature is fluid and cursive, with the first name "Cindy" written in a larger, more prominent script than the last name "Nettles".

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/eb

Ref: ID# 251216

Enc. Submitted documents

c: Mr. Juan Flores
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494
(w/o enclosures)